

“THE LEGAL BRIEF”

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First CG District Legal Office
408 Atlantic Avenue
Boston, MA 02110
Phone: (617) 223-8500



MILITARY SPOUSES RESIDENCY RELIEF ACT SIGNED INTO LAW ON NOVEMBER 11, 2009

On November 11, 2009, President Obama signed the Military Spouses Residency Relief Act (MSRRA). This new law provides some rights and protections to spouses of military members regarding residency, voting, taxation, and land rights by making some amendments to the Servicemembers Civil Relief Act (SCRA). When a service member initially enters the military and leaves their state of domicile or residency because of military orders, they have certain protections through the Servicemembers Civil Relief Act (SCRA). Under the SCRA, if a service member leaves a state because of military or naval orders, the service member will maintain their domicile or residency of that state until he or she takes affirmative steps to change their residency. This protection allow the service member, as he or she is moved around the country by the military, to continue under the laws of their state of residency or domicile for voting, land rights and tax purposes. Because states may differ greatly on these issues, the designation of a state of residency or domicile can be very important. Unfortunately, service members' spouses were not granted the same protections and faced many challenges when they moved with the service member. The Military Spouses Residency Relief Act (MSRRA) now extends some of these protections of residency to military spouses. This article covers the amendment and how these changes may impact military spouses.

1. Residency

The new law states a “spouse of a service member shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the spouse by reason of being absent or present in any tax jurisdiction of the United States solely to be with the service member in compliance with the service member’s military orders **if** the residence or domicile, as the case may be, is the **same** for the service member and the spouse.” Potentially, this legislation will reduce some difficulties and may also provide some benefits to military spouses. Under this new law, if a service member is entitled to SCRA residence/domicile protections, their spouse is entitled to the same protection only if the spouse establishes and maintains the same residence/domicile as the service member. However, it is important to understand that the new law does not allow the military spouse to simply pick the same state of domicile as the service member; the

military spouse must still meet the requirements of physical presence in the state when they form the intent to change their state of domicile and demonstrate this intent to make that state their permanent home. Such intent must be clearly indicated by evidence that shows the state selected is your true residence. The typical “big three” on the list of indicia of residency are: (1) voter registration; (2) driver’s license and vehicle registration; and (3) compliance with income tax requirements. *[For additional information on domicile and the requirements, please read our September 2008 The Legal Brief: “Domicile and Residency for Military Families”]*

2. The Right to Vote

Under the SCRA, service members vote in federal, state or local elections in the state of their legal residence wherever they may be assigned during their military career. Prior to the MSRRA, often the service member’s spouse had to change voter registration with each move to a new state. As a result, military spouses were unable to exercise their right to vote due to missing deadlines to register or not being able to get an absentee ballot in time. The MSRRA allows military spouses to vote in the state of their legal residence when they are accompanying their military spouse to a new state of assignment.

3. Personal Property Taxes and Income Taxes

Under the SCRA, since a service member maintains their state of legal residency at the time he or she entered the military until the service member takes affirmative steps to change it, only the service member’s state of legal residence has the authority to tax military pay. This protects the service member’s military pay from income taxes in the new state where he resides because of military orders (unless that state is also the service member’s residence/domicile). While some states may have no or little tax on income, other states may impose a tax up to eleven (11) percent, which can significantly impact a military family’s paychecks. Because the domicile of a military spouse was not preserved under the SCRA, a spouse’s income could be taxed in multiple states when the spouse moved to accompany the service member. With the MSRRA, the military spouse now actually has greater protection than the military member on taxation of pay! If the spouse works outside the home, all his or her wages are considered to be earned (and taxed) in the state of legal residence and not in the state where it was actually earned if the spouse moved to that state solely to be with the service member. The military member has protection only for their military pay and not any wages earned from a part-time job, which would be taxable by both the state where actually earned and by their state of legal residence. States also differ on tax policies on personal property, which caused problems in the past when vehicles were registered in both spouses’ names. Now, the law is quite clear that the vehicle is considered to be from the state of legal residency, when registered in either the military member’s name, the spouse’s sole name, or in joint names.

4. “A good example has twice the value of good advice.”

Some examples to show how the MSRRA works:

- (a) Service member is a resident/domiciliary of Texas. The spouse takes the required steps to establish and maintain residency/domicile in Texas as well. Service member is assigned to New York and spouse moves to New York to live with the service member and gets a job in New York. The spouse can assert SCRA and New York cannot tax the spouse's income earned in New York.
- (b) Service member is a resident/domiciliary of Texas. He is assigned to New York, while in New York he meets and marries his spouse who is working in New York. The MSRRA does not permit the spouse to now claim Texas residence/domiciliary. New York can tax the spouse's income.
- (c) Service member is a resident/domiciliary of Pennsylvania. Her spouse takes the required steps to establish and maintain residency/domicile in Pennsylvania. Service member is assigned to Massachusetts and spouse moves to Massachusetts to live with the service member and gets a job in Massachusetts. The spouse can assert SCRA and Massachusetts cannot tax the spouse's income earned in Massachusetts; however, Pennsylvania can tax the income. It is incumbent on the spouse to file Pennsylvania estimated taxes on the income and file a Pennsylvania return.

5. Land Rights

The SCRA provides various land right protections for service members, including rights in public lands, desert lands, mining claims and mineral permits and leases. Under these protections, service members may maintain rights to access and use public lands and to enter desert lands obtained before entering military service. The service member could also retain mining claims, mineral permits and leases in the event of nonperformance of the requirements of the lease while on active duty. Under the new MSRRA, these same protections and rights are extended to a service member's spouse.

6. Impact of MSRRA on the States

The states are still sorting out the implications of this law on their income tax and personal property tax systems. Since the law is effective for tax year 2009 but was passed so late in the tax year, the state forms for 2009 are already prepared and do not address this change. Further, if refunds are sought by military spouses for state income tax withheld during 2009, the service member and the spouse can expect some inquiry into the domicile claim or an audit of the tax return of both the service member and the spouse from the state tax authorities to ensure the proper residence is being claimed and sufficient indicia of residency has been

established. Currently, the US Armed Forces Tax Council is working closely with the state taxing authorities to identify the potential issues and seek some standard practices and procedures that would apply to most, if not all, states impacted by the MSRRA. Additional information will be provided to the field in future Legal Briefs when received from the states.

7. A Word of Caution

Claims of residency are likely to be scrutinized carefully by state taxing authorities, not just for spouses, but for service members as well, since the basis for the new tax protection is the same residence/domicile. Claims of changed residency that have no basis in fact may well be viewed as fraudulent by state taxing authorities and subject the family to significant additional tax penalties and interest. Also, keep in mind that when changing your residency, you may be losing other important rights such as the ability to apply for a government job that requires residency, or the ability to qualify for in-state tuition at colleges, or to receive preferential treatment when applying for college. Careful consideration of all the benefits and losses need to be made before deciding to change your residency.

This article is intended as general legal advice. If you have questions regarding your domicile, the SCRA, or other personal legal matters, please call the First CG District Legal Office at (617) 223-8500 for an appointment with a legal assistance attorney. The following military legal assistance websites are also available to educate you on the SCRA:

US Coast Guard Legal Assistance website www.uscg.mil/legal

Armed Forces Legal Assistance website www.legalassistance.law.af.mil/